

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-6955**

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STEPHEN RAY WESTBERRY,

Petitioner - Appellant,

v.

MICHAEL MCCALL,

Respondent - Appellee.

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Appeal from the United States District Court for the District of  
South Carolina, at Rock Hill. R. Bryan Harwell, District Judge.  
(0:07-cv-03978-RBH)

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Submitted: March 3, 2011

Decided: March 21, 2011

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Before WILKINSON, NIEMEYER, and GREGORY, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Stephen Ray Westberry, Appellant Pro Se. Donald John Zelenka,  
Deputy Assistant Attorney General, James Anthony Mabry,  
Assistant Attorney General, Columbia, South Carolina, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Stephen Ray Westberry seeks to appeal the district court's orders denying his Fed. R. Civ. P. 60(b) motion for reconsideration of the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely his 28 U.S.C. § 2254 (2006) petition, and denying a certificate of appealability. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85. We have independently reviewed the record and conclude that Westberry has not made the requisite showing. Accordingly, we

deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED